IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.Rev.Pet.No. 221 of 2000()

CRA.86/1996 of SESSIONS COURT, KOLLAM
CC.19/1992 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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REVN. PETITIONER(S):

VASUPILLAI MANIYAN PILLAI, S/O.VASU PILLAI,
KAMBIKKAKOM COLONY, ASRAMAM WEST WARD,
KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)

RESPONDENT(S):

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20.3.2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.R.P. No.221 of 2000

Dated 20th day of March, 2007.

O R D E R

The accused revision petitioner was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for 3 months for offence under Section 452 IPC and rigorous imprisonment for one year for offence under Section 324 IPC. The sentences were to run concurrently. The fine, if recovered was ordered to be given to PW1. In appeal, learned Additional Sessions Judge confirmed the conviction and sentence. The revision is filed against the said conviction and sentence.

2. According to prosecution, accused trespassed into the house of PW1 and voluntarily caused hurt to her by stabbing her with MO1. Her case is that her husband was working abroad and the accused used to visit the house even when her husband was at home. After her husband left, the brother objected to the accused coming to the house and, enraged with this, the accused committed the offence.

3. The courts below, on consideration of the evidence adduced, found that the prosecution proved its case. The appellate court believed the evidence of PW1 and PW2 and discarded the evidence of PW3, who was examined as eye-witness. PW1 is the injured. PW2 is the son and PW3 is the mother-in-law of PW1.

4. PW1 to PW3 gave evidence consistent with the prosecution case. The lower appellate court found no ground to reject the said evidence. According to learned counsel for revision petitioner, there is discrepancy in the evidence of PW1 and PW2 regarding the time of occurrence. PW1 and PW2 stated that the incident happened at about 10.30 p.m., but the doctor, PW7 deposed that he examined PW1 at about 10 a.m. on the same day at the hospital.

5. Relying upon the difference in time, it was argued that evidence of PW1 and PW2 is to be discarded. I do not find this to be a sufficient reason to discard the evidence given by PW1. Slight variation of half-an-hour in stating the time of

occurrence can be attributed to the time sense of the witness. Nobody can expect a witness to verify the time by looking into the clock before the statement is made. But, it is likely that the doctor will verify the time with reference to watch before examining the patient. The ground stated is insufficient to disbelieve PW1 and PW2.

6. It is also contended that evidence of PW7, the doctor, and Ext.P5 wound certificate show that injured PW1 was brought by one Thampi. It has come out in evidence that Thampi is the brother of PW1. PW1 and PW2 gave evidence that Thampi was not available in the house at the time of occurrence. The accused put forward a case that there was some altercation between Thampi and PW1 and that the injuries were sustained in such incident. Therefore, PW1 and PW2 are suppressing the presence of Thampi at the time of occurrence and this could cast doubt on the veracity of the evidence of PW1 and PW2, it is argued.

7. This contention also does not impress me. PW1

and PW3 gave evidence that Thampi had gone to the hospital, even though he was not available at the time of occurrence. It is only natural and normal for a brother to reach the hospital immediately on knowing about the incident involving his sister. Therefore, there is no reason to disbelieve PW1 and PW3 on this aspect. Both the courts below found that Thampi would have reached hospital subsequently and his presence would have been noted by doctor in Ext.P5. I do not find any reason to reverse the finding, since it cannot be said to be perverse.

8. It is also relevant to note that as per Ext.P5, it cannot be said from the evidence of PW7 and Ext.P5, that the presence of Thampi in the hospital was stated to the doctor by PW1. It is not clear from the evidence from whom the doctor came to know about the presence of Thampi. Therefore, the circumstances pointed out is too insufficient to discard the prosecution case. The non-examination of Thampi also does not assume significance, since at the most he could be examined for proving the alleged motive. The Investigating

Officer deposed that Thampi was not questioned. When there is direct evidence to prove an offence, the failure to prove motive by examining a witness cannot be held to be fatal to the prosecution case.

9. The next contention raised is that none of the neighbours were examined to prove the prosecution case. The non-examination of such witnesses also, on the facts of the case, cannot be made a ground to discard the prosecution case. It appears from evidence that neighbours had reached the place only after the incident. Therefore, there was no possibility for the neighbouring witnesses to see the incident and therefore their non-examination is not fatal.

10. The next argument is that there is delay in lodging the FIR. It is seen from the records that the incident happened on 20.9.1999 and the first information statement was given by PW1 on 22.9.1999. PW1 was in the hospital immediately after the incident and the delay in registering the first information statement cannot be attributed to any latches

on the part of PW1. Only because the police delayed in registering the FIR, PW1's evidence cannot be disbelieved. On an appreciation of evidence of PW1, there is absolutely no reason that PW1 should falsely implicate the accused. No motive is alleged against the accused to implicate him in an offence of this nature. The accused also did not put forward any explanation as to why PW2 should be falsely dragged into the court.

11. At the time of questioning under Section 313, accused only pleaded innocence and stated nothing more. Even if the defence suggestion to the witness PW1 is considered, it appears that Thampi was instrumental in inflicting injury on PW1, to help the brother. It is not comprehensible why an innocent person, who was a regular visitor to the house of PW1, should be dragged on. I find no reason to believe that the delay in registering the FIR was to concoct a false case against accused.

12. Both the courts below considered the evidence

and I find no reason to interfere with the conviction entered against the revision petitioner. The sentence imposed is also proportionate to the gravity of offence, especially, on consideration of the nature of injury sustained and the manner in which injuries were inflicted on PW1. Learned counsel appearing for revision petitioner submitted that leniency may be shown and sentence may be reduced. I do not find any circumstance warranting interference in the sentence.

This petition is dismissed.

K.HEMA, JUDGE.

Krs